IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

Bail Appl..No. 5219 of 2007()

C.R.NO.20/03 OF KOYILANDY EXCISE RANGE

.....

: PETITIONERS/ACCUSED

---

1. BHARGAVI, W/O.VELAYUDHAN, AGED 65 YEARS, KURIYADI THARAMMAL, AYANIKKADU AMSOM DESOM, KOYILANDY TALUK.

2. BABY, W/O.SASI, AGED 30 YEARS, KURIYADI THARAMMAL, AYANIKKADU AMSOM DESOM, KOYILANDY TALUK.

BY ADV. SRI.R.BINDU (SASTHAMANGALAM)

RESPONDENTS: COMPLAINANT & STATE

---

1. THE EXCISE INSPECTOR, KOYILANDY EXCISE RANGE, KOYILANDY.

2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 12/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5219 of 2007

Dated this the 12th day of September, 2007

ORDER

Application for anticipatory bail. The petitioners are mother in law, aged 65 years and daughter in law. They face allegations under the Kerala Abkari Act. They were allegedly having their possession about 5 litres of Indian Made Foreign Liquor for the purpose of sale. The crime was detected and the seizure was effected as early as in 2003. The petitioners were available at the spot on 16.06.03 when the detection was made. But as the excise party did not consist of any woman official, their arrest could not be effected. Investigation is continuing. The petitioners are at large. They are not available for arrest and hence the final report has not been filed yet, submits the learned Public Prosecutor.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. They may be granted anticipatory bail, it is prayed. The fact that the petitioners are women and the 1st petitioner is aged about 65 years may be taken into account, submits the learned counsel for the petitioners.

3. The learned Public Prosecutor opposes the application on the short ground that there are no circumstances warranting or justifying the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C.

4. Having considered all the relevant inputs, I am satisfied, that there is merit in the opposition by the learned Public Prosecutor . Powers under Section 438 Cr.P.C are to be invoked sparingly and in exceptional cases and in aid of justice. Satisfactory and compelling reasons must be shown to exist. Such powers cannot, at any rate, be invoked as a matter of course. Even the fact that the petitioners may have been granted regular bail by this Court is no reason to invoke the discretion under Section 438 Cr.P.C. I agree with the learned Public Prosecutor that the petitioners must appear before the learned Magistrate and seek regular bail in the ordinary course.

5. This bail application is, in these circumstances, dismissed, but with the specific observation that if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-